



ITG News

Keeping First Nations Informed



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Message From The Director

Many of you have probably read about the growth in abusive schemes that began two decades ago with what we now call "tax shelters". While the IRS was successful in addressing those initial schemes, we are now experiencing a new generation of individuals promoting opportunities to avoid taxes through structured transactions that "sound too good to be true" and often are.

Unfortunately, Indian tribal governments are not immune from these promoters. In fact, tribal governments have recently helped the IRS identify several promoters that are attempting to use tribal sovereignty and some of the special tax benefits that tribes enjoy, to enrich a select group of individuals they represent. These promoters may offer the tribe a limited benefit that is marketed as being at no cost or risk to the tribe. In some cases the promoters of these schemes may be invisible to tribal leadership, since they hide behind shell corporations and/or attempt to conduct transactions directly with tribal employees.

The simple fact is that these schemes do bring risk to the tribe. Even where there may be no direct financial risk, the risk to the tribe's reputation is significant and the risk to any tribal employee who becomes involved in such a scheme can be substantial.

The office of Indian Tribal Governments has initiated a program to work with tribes to address this area and ensure that these abusive schemes do not gain a foothold in Indian Country. Our Abuse Detection and Prevention Team (ADAPT) is already developing actions to identify abusive schemes being promoted to tribes, and is working with tribes to address them. Our goal is to protect the interests of all governments through mutual actions that will eliminate these schemes. Our web site will contain information on identified schemes, as well as a method to report any concerns to the ADAPT group. We look forward to partnering with tribes and other interested parties in this effort.


Christie Jacobs



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To add your name or e-mail address to our mailing list, please contact us via e-mail at gary.l.hahn@irs.gov, or call Gary Hahn at (716) 686-4862.



Tip Reporting Agreements – Minimizing Financial Risk

Many tribes have enterprises that employ individuals who receive tip income. These tribal enterprises range from food service establishments to some of the largest casinos in the world. Handling large sums of cash presents many risks, and tribes go to great lengths to minimize any risk of loss.

Unfortunately some tribes have not taken steps to minimize risk that can be present from unreported tip income. Employees who do not fully report their tips to their employer can create a future tax liability for both themselves and their employer. If unreported tip income is discovered as a result of an IRS examination, both the employee and employer could face significant assessments of tax, penalties, and interest. These assessments can be particularly troublesome for the employer, who generally has not anticipated the liability.

In order to reduce the potential for unreported tip income, the IRS has developed a Tip Compliance Program. This program combines employee education with a written agreement that calculates tip rates by occupations and work shifts. Employees are openly encouraged to participate in the program. As part of the agreement, the IRS guarantees that it will not examine tip income reporting by those employees as long as they report tips at or above the established rates. Two variations of these agreements are available – the Tip Rate Determination Agreement (TRDA), and the Gaming Industry Tip Compliance Agreement (GITCA). Interested employers have their choice between the two.

The elimination of risk was realized by one tribal casino that had entered into an agreement. The amount of tip income being reported by their employees rose by over 400% subsequent to the agreement. By entering into the agreement, the casino eliminated a potential unforeseen liability of \$1.5 million dollars per year. While they paid FICA tax on the additional tips being reported, that liability could be predicted and planned. This enabled them to adequately forecast their revenues and expenses, with a significant reduction to future risk of further tax assessments. Similar benefits exist for employees. One benefit is that they will not be examined on tip income. They also receive a full and accurate reporting of their income, which can be a benefit for programs that are based on income levels. This includes pensions, 401(k) plans, and loans.

If your tribe has employees who report tips, and you have not joined our Tip Compliance Program, we encourage you to contact your Indian Tribal Governments Specialist.

???Questions???

Contact your ITG Specialist, or our toll-free call site at 877-829-5500



Update on the Development of an IRS/Tribal Consultation Policy

We continue to move forward in the process to develop an IRS/Tribal Consultation Policy, having completed 12 regional listening meetings with tribal representatives during 2003. A summary of the input received at those meetings was posted to the ITG web site at www.irs.gov/tribes in January, with a link to submit any further comments. Once the period for submitting further input has passed, we will undertake an initial draft that will be further shared for comment. It is our hope to have a final draft policy for review by late 2004.

We welcome your input, so that we can create the best possible policy. Visit our web site at www.irs.gov/tribes to review the input to date and offer us your thoughts before April 30th.

Tribal Enterprise Structure Issues

We have recently encountered several situations where tribes have formed business structures that may unnecessarily subject their earnings to federal income tax. While federally recognized Indian tribes are not subject to federal income tax, if they form a state-chartered corporation that is not specifically exempted from income tax under the Internal Revenue Code (such as IRC 501(c)(3) entities), the entity must file a Form 1120 and pay federal income tax on any net earnings.

In addition, we have encountered situations where tribes have formed subchapter S corporations, where the tribe is a shareholder. While the Service may acknowledge this status and process the resultant Form 1120-S that is filed, the simple fact is that tribes cannot be shareholders in subchapter S corporations. Once these situations are discovered, the entity must be converted to a C corporation, and the resultant Form 1120 will subject the tribe to federal income tax on any net earnings.

If you have either of these situations present within your tribal enterprises, and you wish to restructure them to mitigate the potential tax problem, you should contact your ITG Specialist so that we can take prompt action to effect corrections and limit any potential interest and penalties. In addition, the sooner that a problem is identified, the sooner that you can change the structure of the entity to avoid the future federal tax consequences.

Tribal Employment Tax Guide Now Available

Publication 4268, our on-line Employment Tax Guide for Tribal Governments, is now available at our web site at www.irs.gov/tribes.



Social Security Guidelines for Employers Hiring Foreign Workers

As an employer, you may hire temporary employees from abroad. If so, you expect your employees to have a Social Security number so you can report their wages. As you know, a Social Security number generally is assigned only to people who are authorized to work in the United States. In order to get a Social Security number, foreign workers must comply with several federal laws and regulations before they can get a number and work in the United States. If you are thinking of hiring foreign workers, here is some information for you.

Why does it take so long to get a Social Security number?

Social Security verifies the information on applications and documents to make sure Social Security numbers are issued only to qualified applicants. When foreign workers apply for Social Security numbers, their applications and documents are verified with the Department of Homeland Security (DHS). The DHS advises Social Security if the applicant is authorized to work in the United States. It may take a few days or several weeks to get a Social Security number depending on how long it takes to verify the documents presented. Social Security will issue a number within 2 days of receiving the verification from DHS.

What are your responsibilities to your foreign workers?

As an employer, you should advise your foreign workers that they are required to apply for a Social Security number. You can hire foreign workers who have applied for Social Security numbers, but do not yet have one. If you do so, you must pay their wages as scheduled; you may not delay payment pending receipt of their Social Security numbers. In some instances, foreign workers may leave your employ before their Social Security numbers are issued, so you should get as much identifying information as possible. You need to know the foreign worker's full name as it appears on his or her passport and Social Security number application (sometimes they are different), date of birth, place of birth, father's full name, mother's full maiden name, gender, address, telephone number, the location of the Social Security office where the person applied for the number and the date of the application.

How do you report wages for foreign workers who don't have a Social Security number?

When its time to file your wage reports, you can file even if your foreign workers don't have Social Security numbers. On the paper form in Box "d" enter "Applied For". If you file your wage reports electronically or on magnetic tape or cartridge, enter zero in the field for Social Security numbers. (continued on page 5)



Social Security Guidelines for Employers Hiring Foreign Workers (continued)

Tell your foreign workers that it's important they give you their Social Security number. The foreign worker should know that even if they no longer work for you or they return home, you still need to know their Social Security number to report their wages.

How do I apply for a Social Security Number?

Applying for a Social Security number is free. When you apply for a Social Security number at a Social Security office, you must complete Form SS-5, "Application for a Social Security Card," and provide the necessary documents. All documents must be either originals or copies certified by the issuing agency. Social Security cannot accept photocopies or notarized copies of documents. Here are some examples of the documents you must bring:

Age: A birth certificate is generally the best evidence of age, and must be presented if it is in your possession or can easily be obtained. If not, Social Security can consider other documents, such as your passport or a document issued by the Department of Homeland Security (DHS), to prove your age.

Identity: Social Security must see a document other than your birth certificate that shows the name you want on your Social Security card. Social Security prefers a recently issued document with a photograph, such as a document issued by DHS.

Immigration status: Social Security needs to see the DHS document 1-94, "Arrival/Departure Record" issued to you when you arrived in the United States, showing your lawful immigration status.

Eligibility to work: For most foreign workers, Social Security only needs to see your 1-94, "Arrival/Departure Record." And, if you are an exchange visitor, you must provide your IAP-66, or DS-2019, "Certificate of Eligibility for Exchange Visitor (J-1) Status." (If you are in the United States as a student or an international visitor, you will also need an original, signed letter from your sponsor showing that you are authorized to work.)



Treatment of Taxable Per Capita Gaming Distributions to Minors

We have received several inquiries regarding the tax consequences of taxable per capita gaming distributions to tribal members, and whether there is a tax imposed on distributions (not placed in a grantor trust) to minors on the net unearned income of minors, commonly referred to as the “kiddie tax”.

The Indian Gaming Regulatory Act explicitly provides that per capita distributions of income from Class II and Class III Indian tribal casinos are subject to federal taxation and reportable on Form 1099-MISC (25 U.S.C.S., paragraph 2710(b)(3)(D)). When a payment is made to a tribal member, taxable distributions must be included on an individual’s income tax return.

The tax imposed on the net unearned income of a child under the age of 14, sometimes referred to as the “kiddie tax”, may apply if, at the close of the tax year either parent is alive and the child has not attained the age of 14.

A minor child has the same return filing obligations as any other individual. Any child who has sufficient income must file a federal tax return notwithstanding his minority status under the local law. Generally a child who can be claimed as a dependent on another person’s tax return must file an income tax return if all of his income is earned income totaling more than the basic standard deduction, or if the child has any unearned income, and his earned and unearned income is more than \$1,500.

The child is responsible for filing his own tax return. However, if the child does not file, the parent or guardian of a minor taxpayer must file the return on behalf of the minor. The parent or guardian should sign the return with the child’s name and then the parent or guardian’s own signature followed by “Parent or Guardian for Minor Child”.

The election to claim unearned income of a child on the parents return under Treasury Regulation 6012-1(a) (4) is not available for per capita distributions. The election applies specifically to investment income, such as, dividends, interest income and capital gain distributions.

The per capita distributions are reported on a Form 1099-MISC income statement and should be included on Line 21 of Form 1040, with a description of the source. The correct description will allow the return to process as quickly as possible. For paper or e-file returns, please enter one of the following descriptions on line 21: Indian Gaming Proceeds, Indian Tribal Distribution, or Native American Distribution.

You may obtain additional information by call 1-800-829-1040 or from the Indian Tribal Governments’ web site at: www.irs.gov/tribes.

Federal Tax Calendar for Second Quarter 2004

April 2004

| SUN | MON | TUE | WED | THU | FRI | SAT |
|-----|--|-----|--------------------------------|------------------------------------|--------------------------------|-----|
| | | | | 1 | 2 * Payroll date 3/27-3/30 | 3 |
| 4 | 5 | 6 | 7 * Payroll date 3/31-4/2 | 8 | 9 * Payroll date 4/3-4/6 | 10 |
| 11 | 12 Employees report tips from March | 13 | 14 * Payroll date 4/7-4/9 | 15 ** Monthly Deposit for March | 16 * Payroll date 4/10-4/13 | 17 |
| 18 | 19 | 20 | 21 * Payroll date 4/14-4/16 | 22 | 23 * Payroll date 4/17-4/20 | 24 |
| 25 | 26 | 27 | 28 * Payroll date 4/21-4/23 | 29 | 30 * Payroll date 4/24-4/27 | |

May 2004

| SUN | MON | TUE | WED | THU | FRI | SAT |
|-----|--|-----|--------------------------------|-----|--------------------------------|-----|
| | | | | | | 1 |
| 2 | 3 | 4 | 5 * Payroll date 4/28-4/30 | 6 | 7 * Payroll date 5/1-5/4 | 8 |
| 9 | 10 Employees report tips from April | 11 | 12 * Payroll date 5/5-5/7 | 13 | 14 * Payroll date 5/8-5/11 | 15 |
| 16 | 17 ** Monthly deposit for April | 18 | 19 * Payroll date 5/12-5/14 | 20 | 21 * Payroll date 5/15-5/18 | 22 |
| 23 | 24 | 25 | 26 * Payroll date 5/19-5/21 | 27 | 28 * Payroll date 5/22-5/25 | 29 |
| 30 | 31 | | | | | |

* = Make a Payroll Deposit if you are under the semi-weekly deposit rule. ** = Make a Monthly Deposit if you qualify under that rule.

7 NOTE: Deposits made through EFTPS are due one day prior to the dates listed.

June 2004

| SUN | MON | TUE | WED | THU | FRI | SAT |
|-----|-----|----------------------------------|--------------------------------|--------------------------------------|--------------------------------|-----|
| | | 1 | 2 | 3 * Payroll date 5/26-5/28 | 4 * Payroll date 5/29-6/1 | 5 |
| 6 | 7 | 8 | 9 * Payroll date 6/2-6/4 | 10 Employees report tips from May | 11 * Payroll date 6/5-6/8 | 12 |
| 13 | 14 | 15 ** Monthly deposit for May | 16 * Payroll date 6/9-6/11 | 17 | 18 * Payroll date 6/12-6/15 | 19 |
| 20 | 21 | 22 | 23 * Payroll date 6/16-6/18 | 24 | 25 * Payroll date 6/19-6/22 | 26 |
| 27 | 28 | 29 | 30 * Payroll date 6/23-6/25 | | | |

*= Make a Payroll Deposit if you are under the semi-weekly deposit rule.

**= Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed

Return Filing Dates

By April 30th

File Form 941 for the first quarter of 2004. If the tax was deposited in full and on time, file by May 10th.

File Form 730 on applicable wagers accepted during March 2004.

By June 1st

File Form 730 for applicable wagers accepted during April 2004.

By June 30th

File Form 730 for applicable wagers accepted during May 2004.